

**AN ORDINANCE
BY CITY UTILITIES COMMITTEE**

04- 0 -1204

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A FRANCHISE AGREEMENT WITH NEXTG NETWORKS of NEW YORK, INC., A DELAWARE CORPORATION d/b/a NEXTG NETWORKS EAST, TO PROVIDE TELECOMMUNICATIONS SERVICES USING PUBLIC RIGHT-OF-WAY INCLUDING APPROVED CITY OWNED STREETLIGHT AND STREET POLES; SPECIFYING THE COMPENSATION DUE THE CITY OF ATLANTA BY THE FRANCHISE AGREEMENT; AND FOR OTHER PURPOSES.

WHEREAS, NEXTG NETWORKS of NEW YORK, INC., d/b/a NEXTG NETWORKS EAST, desires to provide telecommunications services on, under over and through the public right-of-way of the City; and

WHEREAS, NEXTG NETWORKS of NEW YORK, INC., d/b/a NEXTG NETWORKS EAST, desires to attach equipment to the City owned streetlights and poles located in the public right-of-way; and

WHEREAS, said equipment, to be known as, "NextG Optical Repeater Network" will incorporate both wireless and fiber optic technologies to provide telecommunications services; and

WHEREAS, NEXTG NETWORKS of NEW YORK, INC., d/b/a NEXTG NETWORKS EAST, has negotiated a franchise agreement with the City, which provides such access and preserves the rights of the City.

NOW, THEREFORE THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA HEREBY ORDAINS:

SECTION 1: That the Mayor be and is hereby authorized to execute a franchise agreement with NEXTG NETWORKS of NEW YORK, INC., d/b/a NEXTG NETWORKS EAST, for use of the public right-of-way and the non-exclusive right of attachment to approved City streetlights and street poles for telecommunications purposes.

SECITON 2: That such franchise agreement shall expire and terminate two (2) years from its effective date. -

SECTION 3: NEXTG NETWORKS of NEW YORK, INC., d/b/a NEXTG NETWORKS EAST, shall pay the City an annual franchise fee equal to three percent (3%) of the franchisee's annual Gross Revenue, provided that in any calendar year that Grantee's Gross Revenue does not exceed \$500,000.00, the Franchise Fee shall be \$15,000.00 per year; provided further, however, that in no event will the Franchise Fee exceed an annual inflation-based cap. Under this Agreement, this cap will be set at eleven million dollars (\$11,000,000.00) annually. The Grantee's obligation to pay the Franchise Fee shall commence on the Effective Date and continue throughout the Term; fees shall be paid on a quarterly basis for the preceding quarter,

and shall be due on April 15, July 15, October 15, and the 15th day of January of each year throughout the Term. In the quarter, the Franchise Fee shall be prorated relative to the number of days in the quarter that the Franchise is in effect. On or before each quarterly payment date, Grantee shall provide a certificate, signed and attested to by the appropriate corporate officers or authorized corporate representatives, which verifies Grantee's Gross Revenues for the prior quarter.

SECTION 4: In addition to the annual Franchise Fee, NEXTG NETWORKS of NEW YORK, INC., d/b/a NEXTG NETWORKS EAST, shall pay the City an annual attachment fee of \$600 per attachment to any City owned streetlight or streetpole that NEXTG is approved to utilize.

SECTION 5: That the City Attorney shall prepare a franchise agreement containing all of the foregoing terms, which shall be approved by the City Attorney as to form.

SECTION 6: That said franchise agreement shall not be binding on the City until executed by the Mayor sealed by the Municipal Clerk and delivered to NEXTG NETWORKS of NEW YORK, INC., d/b/a NEXTG NETWORKS EAST.

TRANSMITTAL FORM FOR LEGISLATION

TO: MAYOR'S OFFICE:

(For review & Distribution to Execution Management)

Commissioner's Signature: _____

Director's Signature: _____

From: Origination Dept. Office of Communications

Contact (name): Joe Morris III
404-330-6504

Committee(s) Purview: CUC

Committee Deadline: _____

Committee Meeting Date(s): JUNE 29, 2004

City Council Meeting Date: JULY6, 2004

CAPTION:

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A FRANCHISE AGREEMENT WITH NEXTG NETWORKS of NEW YORK, INC., A DELAWARE CORPORATION d/b/a NEXTG NETWORKS EAST, TO PROVIDE TELECOMMUNICATIONS SERVICES USING PUBLIC RIGHT-OF-WAY INCLUDING APPROVED CITY OWNED STREETLIGHT AND STREET POLES; SPECIFYING THE COMPENSATION DUE THE CITY OF ATLANTA BY THE FRANCHISE AGREEMENT; AND FOR OTHER PURPOSES.

BACKGROUND/PURPOSE/DISCUSSION:

The City governs the telecommunications and cable companies that do business in the City through the franchise agreement. The franchise agreement sets the legal and financial boundaries in which the companies are to adhere.

FINANCIAL IMPACT (If Any):

The City of Atlanta will receive 3% of the company's gross revenues derived from business in the City of Atlanta. In addition the City will receive \$600 per streetlight or street pole in which NextG Networks utilize space.

Mayor's Staff Only

Received by Mayor's Office: _____

(date)

(initials)

Reviewed by: _____

Submit to Council: _____

(date)

Action by Committee: _____ Approved _____ Adverse _____ Held _____ Amended

_____ Substitute _____ Referred _____ Other